

### **REMARKS**

This Amendment responds to the final Office Action mailed January 28, 2009. Claims 58-63, 73, and 74 were pending in the application prior to this amendment, and claims 58-60, 63, and 74 stand rejected. Claims 61, 62, and 73 were withdrawn in view of a restriction requirement. Claims 58, 61, and 62 have been amended herein, and claims 59, 60, and 74 have been canceled. Applicants respectfully request reconsideration in view of the amendments and the following remarks.

#### **Claims Rejected under 35 U.S.C §102**

Claims 58-60, 63, and 74 stand rejected under 35 U.S.C §102(b) as being unpatentable over U.S. Patent No. 5,716,367 to Koike et al. Claim 58 is the only independent claim of this rejected group and has been amended herein to include the subject matter of claims 59, 60, and 74, which have been canceled accordingly. Amended claim 58 now recites that the aperture is formed in the sidewall of the distal catheter portion, and further recites:

anchor delivery structure disposed in said lumen;

at least one anchor supported on said anchor delivery structure and adapted to anchor to the tissue of the heart;  
and

an elongate tensile member operatively coupled to said anchor;

said anchor delivery structure movable from a first position wherein said anchor is disposed within said lumen, to a second position wherein said anchor is moved through said aperture to engage the tissue of the heart.

Support for this amendment can be found in the Application at page 9, lines 7-15, and page 25, line 25 – page 26, line 23, for example. Accordingly, no new matter is added by the amendment to claim 58.

Applicants further assert that claim 58 is in condition for allowance because the references of record do not disclose a gutter catheter having the features recited in claim 58. In particular, Applicants note that Koike '367 fails to disclose anchor delivery structure, at least one anchor supported on the anchor delivery structure, an elongate tensile member operatively coupled to the anchor, or that the anchor delivery structure is movable from a first position wherein the anchor is disposed within a lumen, to a second position wherein the anchor is moved through the aperture to engage the tissue of the heart, as set forth in claim 58. Moreover, the device of Koike '367 could not be modified to include the features recited in amended claim 58 without rendering that device unsuitable for its intended purpose of applying an intracardiac suture as described in Koike '367 at col. 5, line 44 – col. 7, line 8. For at least these reasons, Applicants respectfully request that the rejection of claim 58 be withdrawn.

Claims 63 and 74 each depend from independent claim 58 and are in condition for allowance for at least the same reasons discussed above for claim 58. Accordingly, Applicants respectfully request that the rejections of 63 and 74 also be withdrawn.

**Rejoinder of Withdrawn Claims**

Claims 61, 62, and 73 were withdrawn as non-elected species, but have been amended herein to depend from allowable claim 58. Accordingly, Applicants respectfully request rejoinder and allowance of claims 61, 62, and 73 for at least the same reasons discussed above for claim 58.

**Conclusion**

In view of the foregoing amendments to the claims and the remarks set forth herein, Applicants believe this case is in condition for allowance and respectfully request early and favorable examination of the pending claims. If the Examiner believes any matter requires further discussion, the Examiner is respectfully asked to telephone the undersigned attorney so that the issue may be promptly resolved. The Examiner's prompt attention to this matter is appreciated.

Applicants do not believe that any fees are due in connection with this communication. However, if any fees are necessary to complete this communication, the Commissioner may consider this to be a request for such and charge any necessary fees to Deposit Account No. 23-3000.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

2700 Carew Tower  
441 Vine Street  
Cincinnati, OH 45202  
(513) 241-2324 (voice)  
(513) 241-6234 (facsimile)

By: /David W. Dorton/  
David W. Dorton, Reg. No. 51,625